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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3691 OF 1997

Doctor Pradhan ... Petitioner

V/s.

M/s.Kumar Industries & Anr. ... Respondents

Mr.K.S. Bapat for Petitioner
Mr.V.K. Wasnik for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 11, 2007**

ORAL JUDGMENT:

. This petition challenges the award of the Labour Court dated 30.12.1996. By this award, the Labour Court has held and declared that the appropriate government has referred the dispute which was non-existent and non-est. The Labour Court dismissed the Reference.

2. The facts in the present case are not in dispute. The Petitioner was employed as a Chipper on a daily wage of Rs.60/- with Respondent No.1 from October 1992. He met with an accident on 8.4.1993 while on duty. He was paid medical benefit under the Employees State Insurance Act and a fitness certificate was issued to him on 1.2.1994 by the Doctor appointed by the Employees State Insurance Corporation. The petitioner reported for work on the next day but was not permitted to resume duty. He, therefore, lodged a complaint with

the Government Labour Officer and also served a demand for reinstatement with continuity of service and full backwages on the Respondent on 17.3.1994. The dispute between the petitioner and his employer was admitted in conciliation. The conciliation proceedings resulted in the failure report being submitted to the appropriate government. A Reference was therefore, made for adjudication of the dispute before the Labour Court. After pleadings were completed and evidence was led, the Labour Court has passed the impugned award.

3. Although it is difficult to decipher exactly what the Labour Court wanted to say in the award, what can be gleaned from the award is that the findings of the Labour Court are: (i) that the dispute between the parties was non-existent because the employer had offered a job to the workman before the conciliation officer; (ii) that the petitioner workman refused to accept the job which was offered since he was offered the same with a contractor of the respondent employer; (iii) that the workman refused to accept the job offered by his employer because the employer refused to pay him backwages while offering to reinstate him. It is for these reasons that the Labour Court has held that the dispute is non-existent.

4. Had the Labour Court taken the trouble to read

the definition of industrial dispute as defined in section 2(k) of the Industrial Disputes Act, it would certainly not have drawn the conclusions that it has. An industrial dispute means any dispute or difference between an employer and a workman which is connected with the employment or non-employment or the terms of employment or with the conditions of labour. The refusal on the part of the petitioner to accept the purported offer made by the respondent to reinstate him, first without backwages and then through its contractor, would itself show that there existed an industrial dispute. It is for this reason the Conciliation Officer submitted a failure report. The industrial dispute which exists must be referred for adjudication under section 10(1)(d) of the Act. This is what the appropriate government has done. At no point of time did the employer choose to challenge the order of Reference by filing a writ petition in this Court by contending that no dispute existed between the parties and, therefore, the Reference should be quashed. Apart from this, the entire reasoning of the Labour Court shows total non-application of mind and is perverse.

5. The learned advocate for the respondent has submitted that the terms of Reference contained in the schedule to the Reference show that the dispute was for reinstatement of the petitioner with backwages. There

was no dispute as to whether the employment should be through the contractor or with the respondent which was the principal employer. He then submits that admittedly, the workman was offered a job with the respondent's contractor and the workman should have joined the service with the contractor and then sought regularisation with the principal employer. The last submission made by the learned Counsel is that the failure report indicates that the employment was offered to the workman and, therefore, there was no dispute which existed and which could have been referred for adjudication.

6. These submissions are stated only to be rejected. There is no dispute that the terms of Reference indicate that the dispute which existed between the parties was whether the petitioner was entitled to reinstatement in service with continuity of service and backwages. The dispute was not whether he should be employed with the contractor because it was the petitioner's case that the respondent was his employer. The submission that the workman should have accepted the job with the respondent's contractor and then sought regularisation makes a mockery of the plight of the workman. As stated earlier, the dispute was between the respondent and the petitioner and not with any contractor. The petitioner was never employed with

any contractor and, therefore, the question of his accepting the job with a contractor does not arise. Therefore, the so called offer made by the respondent for providing employment to the petitioner was not genuine and instead was malafide. The offer of employment stated in the failure report indicates that the offer was conditional and, therefore, the workman refused the offer. In any case, it could not be said that the Reference was not maintainable or that the dispute was not in existence.

7. The impugned award is therefore set aside. The Reference is remanded to the Labour Court. The Labour Court will decide the Reference and adjudicate the dispute which has been referred within six months from today. All contentions of the parties, except regarding the existence of a dispute, are kept open.

8. Rule made absolute with costs.